



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 4, 2003

Chief Michael J. Jauch
City of Hubbard
118 Magnolia Street
Hubbard, Texas 76648

OR2003-8692

Dear Chief Jauch:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192194.

The Hubbard Police Department (the "department") received two requests. The first sought "audio and video tapes from the patrol car and any and all reports that were generated as a result of [a particular] traffic stop." The second request asked for audio and video tapes relating to two particular incidents, copies of the department's racial profiling policy, and copies of "any other policies and procedures relating to the actions of officers while on patrol. In particular, those policies and procedures pertaining to traffic stops." You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have only submitted video tapes for our review. As you have not submitted any other responsive information for our review, we assume you have released such information to the extent that it exists. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We turn now to your arguments for the submitted information. Initially, we note that the video tapes include police officers requesting criminal background checks on individuals they have stopped. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by

judicial decision” and encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI “means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions” but does not include “driving record information maintained by [the Department of Public Safety (“DPS”)] under Subchapter C, Chapter 521, Transportation Code.” Gov’t Code § 411.082(2).

Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. See 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”), (2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Under chapter 411 of the Government Code, a criminal justice agency may obtain CHRI from DPS or from another criminal justice agency. *Id.* §§ 411.083(b)(1), .087(a)(2), .089(a). However, CHRI so obtained is confidential and may only be disclosed in very limited instances. See *id.* § 411.084; see also *id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, to the extent that the submitted video tapes contain information that comes within the definition of CHRI and that was obtained pursuant to federal or state laws, such information is confidential and must be withheld pursuant to section 552.101 and the relevant state and federal regulations.

You also contend that portions of the submitted video tapes are protected under section 552.102 of the Government Code. However, this section excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy” and “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee.” Gov’t Code § 552.102 (emphasis added). Because the video tapes do not constitute higher education transcripts of professional public school employees and you have not informed us that the tapes are maintained in the personnel files of any department employee, we find that section 552.102 does not apply to the submitted information and will address your arguments under section 552.101 and common law privacy instead.

The common law right of privacy encompassed by section 552.101 protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public

disclosure under common law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)), personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Having reviewed the submitted video tapes, we find that, even if some of the information they contain could be considered highly intimate or embarrassing, such information is of legitimate public concern. Therefore, no portion of the submitted video tapes may be withheld pursuant to section 552.101 and common law privacy.

We note that the submitted video tapes include social security numbers of members of the public. Section 552.101 also encompasses amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), that make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that any social security number at issue is confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that such information is not obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990.

You also contend that portions of the video tapes are protected under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming this subsection must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You assert that information in the video tapes is "about active case investigations." However, you have not informed us which of the dozens of traffic stops depicted in the video tapes are the subject of active investigations, and we note that several of the traffic stops concluded with the officer issuing a verbal warning to the motorist and allowing the motorist to drive away. Based on our review of your brief and the information at issue, we find that you have failed to demonstrate how release of any portion of the video tapes would interfere with the detection, investigation, or prosecution of crime. We therefore find that you have

failed to demonstrate the applicability of section 552.108(a)(1), and none of the information may be withheld on that basis.

You also raise section 552.119 of the Government Code as a possible exception to disclosure. This section provides:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

(1) the officer is under indictment or charged with an offense by information;

(2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or

(3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph exempt from disclosure under Subsection (a) may be made public only if the peace officer or security officer gives written consent to the disclosure.

Gov't Code § 552.119. In this instance, you have not demonstrated, nor is it apparent from our review of the submitted information, that release of the video tapes would endanger the life or physical safety of any of the officers depicted. We therefore determine that the department may not withhold any portion of the submitted video tapes pursuant to section 552.119 of the Government Code.

We note that the submitted video tapes include motor vehicle record information. Section 552.130 of the Government Code requires the department to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state . . . [or] a motor vehicle title or registration issued by an agency of this state." Consequently, pursuant to section 552.130, the department must withhold the video tapes to the extent that they include Texas-issued driver's license and license plate information, including classes, restrictions, and expiration dates, as well as vehicle identification numbers that pertain to vehicles for which an agency of this state has issued a certificate of title or registration. We note, however, that section 552.130 is based on privacy concerns. Therefore, each requestor has a special right of access to the video tapes to the extent that they contain motor vehicle record information that pertains to him. *See* Gov't Code § 552.023(b) (information may not be withheld from person who is subject of

information solely on basis that information is excepted from disclosure to protect the subject's privacy).

In summary, the department must withhold the submitted video tapes under section 552.101 to the extent that they include CHRI that was obtained pursuant to chapter 411 or federal regulations. Social security numbers may be confidential under federal law. The video tapes must also be withheld under section 552.130 to the extent that they contain motor vehicle record information; however, each requestor has a special right of access to the video tapes to the extent that they contain motor vehicle record information that pertains to him. The remainder of the video tapes must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

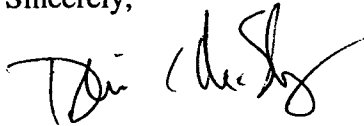
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "D. McElroy", written over a horizontal line.

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 192194

Enc. Submitted documents

c: Mr. Mitchell B. Vardeman
P.O. Box 445
Hubbard, Texas 76648
(w/o enclosures)

Mr. Chris Wragge
1100 SH 171
Hubbard, Texas 76648
(w/o enclosures)